

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JUSTIN BEGANDY,)	
	Plaintiff,)
)	C.A. No. 21-213 Erie
)	
v.)	
)	
WELLPATH, et al.,)	District Judge Susan Paradise Baxter
	Defendants.	Magistrate Judge Richard A. Lanzillo
)	

MEMORANDUM ORDER

Plaintiff Justin Begandy, an inmate incarcerated at the State Correctional Institution at Albion, Pennsylvania (“SCI-Albion”), initiated this *pro se* civil rights action on July 30, 2021, against Wellpath, the company contracted by the DOC to provide medical services at its correctional facilities (“Wellpath”), and its employees, Amanda Hartwell, SCI-Albion’s Medical Director (“Hartwell”), Morgan Oliver-Harmon, SCI-Albion’s Health Care Administrator (“Oliver-Harmon”), and Kimberly Gasser, a Certified Registered Nurse Practitioner at SCI-Albion (“Gasser”) (collectively referred to as “Wellpath Defendants”); and Jeri Smock, Corrections Healthcare Administrator at SCI-Albion (“Smock”). The case was referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On April 18, 2022, Plaintiff filed an amended complaint, which is the operative pleading in this case [ECF No. 50].

Prior to the filing of the amended complaint, each Defendant had filed a motion to dismiss Plaintiff’s original complaint based, in part, on Plaintiff’s failure to file a certificate of

merit (“COM”) in support of his medical negligence claim, as required by Pennsylvania Rule of Civil Procedure 1042.12. [ECF Nos. 22, 32] In response to each motion, Plaintiff filed a motion for extension of time to file a COM, which was granted by the Court. [ECF Nos. 30, 37]. The last such extension expired on April 8, 2022. [ECF Nos. 30, 37]. Plaintiff subsequently filed his amended complaint, and Defendants' original motions to dismiss were denied as moot. [ECF No. 49].

The amended complaint contains two counts: a state law medical negligence claim against all Defendants (Count I), and an Eighth Amendment claim of deliberate indifferent to serious medical needs against all Defendants other than Defendant Glasser (Count II). However, Plaintiff still did not file a COM.

On April 29, 2022, the Wellpath Defendants filed a motion to dismiss the amended complaint for failure to state a claim on which relief may be granted [ECF No. 51]. Three days later, Defendant Smock filed her own motion to dismiss [ECF No. 53]. Plaintiff then filed another motion to extend the time for filing a COM [ECF No. 64]. This motion was denied; however, Plaintiff was granted an extension of time to file a response to Defendants' motions to dismiss. [ECF No. 70]. Plaintiff filed a motion for reconsideration of the Court's denial of a further extension of time to file a COM [ECF No. 72], which was also denied by the Court. [ECF No. 73]. Nonetheless, Plaintiff was granted an additional ten days to respond to Defendants' motions to dismiss. Plaintiff subsequently filed a single responsive brief to both motions on August 25, 2022. [ECF No. 76].

On October 27, 2022, Judge Lanzillo issued a Magistrate Judge's Report and Recommendation (“R&R”) recommending that Defendants' motions to dismiss be granted and

that the amended complaint be dismissed, with prejudice [ECF No. 78]. After obtaining an extension, Plaintiff filed objections to the R&R on December 30, 2022. [ECF No. 82]. However, these objections largely express Plaintiff's dissatisfaction with the medical care he received and fail to establish any cognizable ground for overturning the Magistrate Judge's findings. Moreover, Plaintiff's complaints regarding the requirement to obtain a COM, though understandable, fail to move the needle in light of the numerous extensions of time Plaintiff was granted by the Court.

After *de novo* review of the complaint and documents in the case, together with the report and recommendation and objections thereto, the following order is entered:

AND NOW, this 13th day of January, 2023,

IT IS HEREBY ORDERED that the motions to dismiss filed by the Wellpath Defendants [ECF No. 51] and Defendant Smock [ECF No. 53] are GRANTED, and Plaintiff's amended complaint is DISMISSED, with prejudice. The report and recommendation of Magistrate Judge Lanzillo, issued October 27, 2022 [ECF No. 78], is adopted as the opinion of the court.

The Clerk is directed to mark this case CLOSED.



SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
U.S. Magistrate Judge